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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. [redacted] 21

BACHARACH CORPORATION OF AMERICA,

Petitioner,

v.

EDGAR SARGENT BOLEN, Trustee,

Respondent,

and

[redacted] Insurance Co., Inc.,

Intervening Respondent.

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STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 774

BACARDI CORPORATION OF AMERICA,
Petitioner,

RAFAEL SANCHO BONET, Treasurer,
Respondent,

and

DESTILERIA SERALLES, INC.,
Intervenor-Respondent.

SUGGESTIONS OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS OF THE COURTS BELOW

The opinion of the District Court ("Opinion, Findings of Fact and Conclusions of Law"; R. 95-106) is not officially reported. The opinion of the Circuit Court of Appeals, First Circuit, January 12, 1940 (R. 429-443) is reported in 109 F. (2d) 57.

JURISDICTION

Jurisdiction exists in this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938.

QUESTION PRESENTED

The question is of the power of the Legislature of Puerto Rico to foster, after the repeal of Prohibition, the renascent insular rum manufacturing industry by for-

bidding the labeling of rum manufactured in the Island with labels theretofore used in foreign countries, tending to confuse the casual purchaser; and to prevent the evasion of this regulation by forbidding shipments in bulk. There is in our supporting brief (*infra*, pp. 13-20) an analysis of the three statutes to that end enacted at three succeeding sessions of the Legislature,[1]—the first two "experimental" in nature, to remain in effect only for short times; and the third permanent, reciting that the plan had proven satisfactory.

After the bill for the first of the experimental Acts had been introduced in the Legislature,[2] and notice of the plan had thereby been given to the world, the present petitioner, the American agency of the Cuban corporation, Compania Ron Bacardi, S. A.,[3] applied for a license, April 6, 1936, to do business as a "foreign corporation" in Puerto Rico; *and* later, on July 20, 1936, applied for and received from the insular Treasurer a permit under that Act[4] for distilling, rectifying and warehousing alcohol. In accepting this permit, petitioner expressly accepted the

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[1] Act No. 115, approved May 15, 1936, at the regular 1936 session; Act No. 6, June 30, 1936, at the Special Session of 1936; and Act No. 149, May 15, 1937, at the regular 1937 session. Pertinent parts are quoted in the "margin" [foot-note] to the opinion of the Circuit Court of Appeals, R. 430-434. See also Appendix, *infra*, pp. 62-68.

[2] Necessarily by Saturday, March 21, 1936; in view of the provision of Sections 33 and 34 of the Organic Act, requiring the Legislature to convene in regular session each year on the second Monday of February, and forbidding the introduction or material alteration of any bill [except the general appropriation bill] after the first forty days of the session. See footnote 8, *infra*, pp. 13-14.

[3] *Confer, infra*, pp. 41-42.

[4] Act No. 115, *supra*, approved May 15, 1936, the first Act of the series, superseded, on September 30th, by Act No. 6 of the Special Session.

conditions, as the Act required, binding it to compliance with the statute. So that, whatever investment it may claim to have made in Puerto Rico, was made with full knowledge of the statutory plan.

The statute exempts from its prohibition the use of foreign labels actually registered and in use in Puerto Rico prior to February 1, 1936,—that is to say, prior to the first day of the month when the regular session of the Legislature convened at which the first of these Acts was adopted. That exemption was made in fairness to firms who had actually invested money in Puerto Rico in good faith before the plan was instituted. That was considered reasonable by the Court of Appeals (R. 442; quoted, *infra*, p. 7).

DISTRICT COURT'S DECISION

The legislation was attacked by the present petitioner by this bill for a declaratory judgment and injunction in the United States District Court of the District of Puerto Rico alleging that it is violative (1) of the due process and equal protection clauses of the Constitution and of the Organic Act for Puerto Rico, (2) of the commerce clause of the Constitution, (3) of the Federal Alcohol Administration Act of August 29, 1935, as amended, (4) of the Trade Mark Convention between the United States and various American Republics, including Cuba, signed February 20, 1929, and (5) of the requirement of Section 34 of the Organic Act for Puerto Rico that a bill shall contain but one subject which shall be expressed in the title.

The District Court overruled or disregarded the contentions as to supposed violations of the Federal Alcohol Administration Act, and of the Treaty, and also that with reference to the requirement as to the title of bills under Section 34 of the Organic Act; but upheld petitioner's contentions as to the commerce clause of the Constitu-

tion, and as to due process and the equal protection clauses; and accordingly held the legislation invalid.

CIRCUIT COURT OF APPEALS

The Circuit Court of Appeals reversed. It upheld the legislation. It agreed with the District Court that there is no violation of the Federal Alcohol Administration Act; nor of the Treaty; and ignored petitioner's contention concerning Section 34 of the Organic Act with reference to the titles of the Acts. It disagreed, however, with the District Judge, as to the other matters, upon which he had upheld the petitioner. It held, in the first place (R. 435-436), following its own earlier decision in *Lugo* v. *Suazo*, 59 F. (2d) 386, 390, that the interstate commerce clause of the Constitution does not run to Puerto Rico, since "Puerto Rico is not a State", and the interstate commerce clause, on its face, relates only to "Commerce *with foreign nations, and among the several states,* and with the Indian Tribes"; and, hence, that the plenary power of the Congress as to commerce between the mainland and a Territory, such as Puerto Rico, rests, not upon that clause, but upon the Constitutional power given the Congress by Article IV, Section 3, clause 2, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States".[5]

The Circuit Court then holds (R. 438-443), upon a careful discussion, that the legislation here involved constitutes a valid exercise of the police power of the insular Legislature, and does not violate either the due process clause or the equal protection clause of the Fifth Amendment and of Section 2 of the Organic Act of Puerto Rico. The court points out (R. 439-440) that the District Court had said in its opinion (R. 101) that Puerto Rico could

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[5] *Confer, infra,* "Point V", pp. 28-32.

constitutionally "deny any foreign corporation or nonresident the right to manufacture or sell rum within Puerto Rico"; and the Circuit Court says (R. 439) that, in so holding, "the District Court was right"; but then the Circuit Court goes on to say (R. 440):

> "But we think that having the absolute power to prohibit foreign corporations from manufacturing or selling intoxicants the Puerto Rican Legislature had the right to prescribe the conditions under which such business might be conducted. The greater power includes the less. *Ziffrin* v. *Martin*, decided November 13, 1939 by the Supreme Court of the United States;[6] *Seaboard Air Line Railway* v. *North Carolina*, 245 U. S. 298, 304. To say the least, the legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition.
>
> "The legislative purpose to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital, so as to avoid the increase and growth of financial absenteeism and to favor this domestic industry and to protect it against any unfair competition, was legitimate. And we may not strike down any legislation designed to effectuate such purpose just because it may be thought unlikely completely to accomplish the desired result. Whether the statutes prohibiting the use of certain trade marks and corporate names and whether the legislation forbidding shipments in bulk (presumably passed in part to prevent an evasion of the trade mark prohibition) will accomplish the desired result is not the question for our determination. The Legislature of Puerto Rico possessing 'substantially all the local legislative powers of a state legislature, in all respects here involved' including the local police powers particularly applicable to the liquor business, has manifested its faith in the efficacy of its policy through three successive sessions, the session of 1936, the special session of 1936 and the regular ses-

[6] *Ziffrin, Inc.* vs. *Reeves, et al.*, 308 U. S. 132, 138-139.

sion of 1937, and it is not for us to say whether its faith is well founded. Even if we knew enough about the matter to form a judgment as to the wisdom of these statutes we should be exceeding our function were we to attempt to substitute our judgment for that of the Legislature. As said by the Supreme Court, in *Nebbia* v. *New York*, 291 U. S. 502, 537, 'with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. * * * Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.'

"Bearing in mind that doubt is not enough, that unconstitutionality must clearly appear in order to warrant us in holding legislation void, and being unable to say that the statutes here questioned so lack any reasonable basis as to be arbitrary or capricious, we think they should not be invalidated as repugnant to the due process clause of the Constitution of the United States or the Organic Act for Puerto Rico. *St. Joseph Stock Yards Company* v. *United States*, 298 U. S. 38, 51; *Standard Oil Co.* v. *Marysville*, 279 U. S. 582; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 391.

"The District Court ruled that 'the provisions of Act No. 6 of June 30, 1936 as amended by Act No. 149 approved May 15, 1937, which restrict the use of certain trade marks and corporate names, discriminate arbitrarily against the plaintiff; violate the equal protection clause of the Constitution of the United States and the Organic Act of Puerto Rico and are invalid.'

"It would seem that the equal protection clause appearing in the 14th Amendment of the Constitution of the United States limits the powers of the states and is inapplicable to Puerto Rico. But this is of no importance here because the Organic Act for Puerto Rico expressly provides that 'no law shall be enacted

in Puerto Rico which * * * shall deny to any person therein the equal protection of the laws.' The statutory provision forbidding the shipping of rum in bulk, which applies to all shippers, need not be considered in this connection. The above ruling relates only to the provisions prohibiting the use of certain trade marks and corporate names. As to this aspect of the case, the District Court said, 'whether so intended or not the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination.' We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time. We can not say without doubt upon the subject, that such a statute is unusual or capricious or unjustly discriminatory. In *Rapid Transit Corp.* v. *New York,* 303 U. S. 573, 578, it is said: 'Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. * * * Indeed, it has long been the law under the 14th Amendment that "a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it."' See also *Borden* v. *Ten Eyck,* 297 U. S. 251; *United States* v. *Rock Royal Co-op. Inc.,* 307 U. S. ; 59 S. C. 993. Upon the principles heretofore stated and which must govern us in determining the constitutionality of an act of a legislature possessed of ample police powers, we cannot declare any of the statutory provisions here questioned repugnant to the equal protection clause of the Organic Act of Puerto Rico or if applicable

> the same clause appearing in the 14th Amendment to the Constitution of the United States."

STATUTES

As already noted (*ante,* foot-note 1, p. 2), the pertinent parts of the insular Acts here involved are in the "margin" [foot-notes, R. 430-434] to the opinion of the Circuit Court of Appeals. They are analyzed in our appended Brief in Support of these Suggestions (*infra,* pp. 13-20); and those portions of Acts Nos. 6 and 149 here directly assailed are likewise in the Appendix (*infra,* pp. 62-68). Other pertinent constitutional and statutory provisions, federal and insular, are in the Appendix (*infra,* pp. 55-62).

PETITIONER STATES NO SUFFICIENT REASONS FOR GRANTING THE WRIT

Petitioner's "Reasons for Granting the Writ" (*Petition,* pp. 8-12) are stated as: "(1) *Desirability of Construction of Trade Mark Convention*"; "(2) *Importance of Decision on Equal Protection Clause of the Organic Act of Puerto Rico*"; "(3) *Necessity of Resolving Conflict with Federal Alcohol Administration Act and Regulations*"; and "(4) *Petitioner should be Protected Against Being Deprived of Its Property Without Due Process of Law*".

But: (1) Petitioner does not point out any clause or any language in the Treaty evidencing any intent to override the established trade mark laws, or to do anything further than to grant to the holders of foreign trade marks the same rights in relation to them that the holder of a domestic trade mark would have. And petitioner expressly admits (*Petition,* p. 8) that:

> "This Court has often held that trade-marks are creatures of the common law; *i.e.*, the law of the States" [including, of course the Territories].

And, as above pointed out, there was no conflict be-

tween the District Court and the Circuit Court of Appeals on this question. Both courts alike held the Treaty inapplicable. Petitioner points out no conflicting decision, anywhere. [*Confer* also, *infra,* Brief, "Point IX", pp. 35-36].

(2) Supposed "*Importance of Decision on Equal Protection Clause of the Organic Act of Puerto Rico* " (*Petition,* pp. 9-10). This "Reason" of petitioner is really not quite understood. The "equal protection clause" of Section 2 of the Organic Act of Puerto Rico [Appendix, *infra,* p. 55] is plain enough. No question as to its meaning is stated in the petition, nor raised on the record in this case.

(3) Supposed "*Necessity of Resolving Conflict With Federal Alcohol Administration on Act and Regulations*" (*Petition,* pp. 10-12). No conflict appears. As above pointed out, here again the District Court and the Circuit Court of Appeals were in agreement. Both courts held that this insular legislation does not conflict with the Federal Alcohol Administration Act in any way. Petitioner cites no contrary decisions.[7] [*Confer* also, *infra,* Brief, "Point VIII", pp. 34-35]

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[7] The only supposed "conflict" which petitioner points out is simply a plain error on petitioner's part. Petitioner says (*Brief,* pp. 23-24):

> "Section 5(c) of the Federal Alcohol Administration Act requires that distilled spirits be labelled in conformity with regulations * * *. The regulations require (Sec. 53; R. 333) that the label show the name of the distiller or rectifier and the place where prepared. Thus the federal regulations *require* petitioner's use of its name upon its label. The Puerto Rican statute *prohibits* petitioner's use of its name upon its label. If petitioner labels as the federal regulation commands, the Puerto Rican statute says it cannot ship." (*Italics are petitioner's*)

But petitioner misstates the Puerto Rican statute. It does **not** prohibit the use of the manufacturer's name upon its label. **To the exact contrary, it expressly requires**

(4) *"Petitioner Should be Protected Against Being Deprived of Its Property Without Due Process of Law"*. (*Petition*, p. 12).

Under this "Reason" petitioner says: "Trade marks and commercial names are property rights and are jealously protected as a sound public policy", and goes on to speak of "expropriation of good-will and trade marks".

But nothing of that kind is here involved, at all.

BRIEF IN SUPPORT OF THESE SUGGESTIONS APPENDED

Appended is a brief in support of these suggestions in opposition to the granting of the writ, setting out our position somewhat more at length.

CONCLUSION

The decision of the Circuit Court of Appeals was right. The legislation is valid. The petition for certiorari should be denied.

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GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

(Sec. 40 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937; *infra*, p. 18):

> "Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: * * * **the name of the bottler or canner.** * * *; *Provided, further,* That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears". (*Emphasis supplied*)

BRIEF IN SUPPORT OF SUGGESTIONS IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT

This was a bill for a declaratory judgment and injunction filed in the United States District Court for the District of Puerto Rico on July 31, 1937, by the plaintiff-petitioner, Bacardi Corporation of America, a corporation of Pennsylvania, against Rafael Sancho Bonet, Treasurer of Puerto Rico, this respondent. The bill is on pages 1 to 23 of the record, and its appended exhibits on pages 25 to 60. Its purpose was epitomized by DISTRICT JUDGE COOPER in his opinion, May 9, 1938, as follows (R. 95):

> "By this suit the plaintiff asks that the Treasurer of Puerto Rico be enjoined from enforcing certain provisions of Act No. 6 of the Legislature of Puerto Rico approved by the Governor on June 30, 1936, and Act No. 149 of May 15, 1937, amending said Act No. 6 and making the same permanent. It is alleged that the provisions assailed are repugnant to the due process and equal protection and commerce clauses of the Constitution of the United States, and also violative of the provisions of the Organic Act of Puerto Rico. It is further alleged that the provisions of the Federal Alcohol Administration Act of August 29, 1935, as amended, and the Trade-mark Convention between the United States and various American republics, including Cuba, signed February 20, 1929, are also violated. The plaintiff alleges that the requirement that all bills shall refer to one subject, which shall be expressed in the title, is not observed."

Petitioner alleges in its bill of complaint that it, the Bacardi Corporation of America, a Pennsylvania corporation, possesses the right, by contract with Compania Ron Bacardi, S. A., a corporation of Cuba, to use in the United States, including Puerto Rico, the various "Bacardi" trademarks and labels, and also the secret processes or formulae

for the making of "Bacardi" rum. That the Bacardi distillery and business was established in 1862 in Santiago de Cuba by Facundo Bacardi, and has been continued by the Bacardi family ever since, and that (R. 3):

> "(3) Bacardi rum is and always has been made according to definite processes and methods which are trade secrets. It is a product of high and recognized quality and enjoys an excellent reputation. The producers of Bacardi rum possess a valuable good will and property right in the name Bacardi and in the trademarks and distinctive labels under which Bacardi rum has always been sold."

It is alleged (R. 3-4) that various of the Bacardi trademarks have been registered in the United States Patent Office, among them seven trade-marks listed in the bill of complaint, that these registrations are based upon corresponding Cuban registrations, and that they are authorized by the Convention between the United States and Cuba, and by United States statutes [46 Stat., Part. 2, pp. 2907 *et seq.*, Act of February 20, 1905, 15 U.S.C., Secs. 81 and 84 (copies of these seven trade-marks are exhibits to the bill, R. 25-31)], and also that four of the Bacardi trade-marks, *viz.*, "Bacardi", "Bat Trade-Mark", "Ron Bacardi, Superior Carta de Oro", and "Ron Bacardi, Superior Carta Blanca", were registered on April 10, 1935, in the office of the Executive Secretary of Puerto Rico. It is also alleged (R. 5) that "the label proposed to be used by plaintiff in Puerto Rico has been approved by the Federal Alcohol Administration under the Federal Alcohol Administration Act of August 29, 1935" (c. 814, 49 Stat. 977; "A copy of such approval" is an exhibit to the bill, R. 34), and that the plaintiff corporation was licensed to do business in Puerto Rico as a "foreign corporation" on April 6, 1936, by certificate of registration from the Executive Secretary of Puerto Rico, and also that, on July 20, 1936, it received from

the Treasurer of Puerto Rico a permit for distilling, rectifying and warehousing alcohol.

The particular sections of the Acts assailed are (Prayer of the Bill of Complaint, R. 22):

> "Sections 2, 3, 4 and 5 (insofar as Section 4 adds subsection (b) to section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937" [Laws of 1937, pp. 392, 393-396; *infra*, pp. 8-10], "and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend." [Act No. 6 of 1936, approved June 30, 1936, appears in the Laws of Puerto Rico, Special Session, 1936, pp. 44-112; Secs. 40, 44 and 97 are, respectively, on pp. 76, 78, and 108; and see *infra*, pp. 17-20, and Appendix, pp. 62-68. They are also set forth in substance in the Bill of Complaint (R. 1[illegible]15)].

The bill also sets out the substance of the Title and of Section 41 of the earlier temporary Act No. 115, the "Alcoholic Beverage Law of Puerto Rico" enacted at the regular 1936 session of the Legislature, and approved May 15, 1936, —[*exactly one year earlier than* Act No. 149 of 1937],— as an "emergency" act to remain in effect only until September 30, 1936, "as it contains provisions of an experimental nature" (Sec. 97). Laws of 1936, pp. 610, 640-646, 678; *infra*, pp. 14-17.[8]

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[8] Under the provisions of Section 33 of the Organic Act for Puerto Rico as amended by the "Butler Act" of March 4, 1927 (44 Stat. 1418, 1420) requiring regular sessions of the Legislature to convene on the second Monday in February of each year, and to close not later than April fifteenth following, and of Section 34 of the Organic Act (39 Stat. 951, 961) providing that

> "No bill, except the general appropriation bill for the expenses of the Government only, introduced in either house of the Legislature after the first forty days of the session, shall become a law",

and that (*ib.*, p. 961):

> "* * *, and no bill shall be so altered or amended on its

Section 41 of this Act No. 115 of May 15, 1936, contained provisions substantially along the same lines as those elaborated in the later Acts No. 6 of June 30, 1936, and No. 149 of May 15, 1937, to which the plaintiff-petitioner now objects. Section 41 of Act No. 115 of May 15, 1936 [the temporary Act, the first of the three Acts of the series] contained the provisions (Laws of 1936, at pp. 640-646) quoted in the plaintiff's bill of complaint (R. 7-9) that:

> "Section 41.—The Treasurer of Puerto Rico shall not issue any license prescribed by this Act for any

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> passage through either house as to change its original purpose",

and in view of the fact that, in the year 1936, the second Monday of February, when the Legislature convened under Section 33, fell on February 10th, and that the forty days thereafter limited by the Congress for the introduction of bills expired on Saturday, March 21st, and the expiration date for the session was April 15th [leaving the Governor thirty days thereafter within which to act on bills passed at the session; Organic Act, Sec. 34, 39 Stat., at p. 961], it is evident that the bill which ultimately became this Act No. 115, the "Alcoholic Beverage Law of Puerto Rico", approved by the Governor on May 15, 1936, must have been introduced and pending before the Legislature in the form of a bill giving substantial notice of its final provisions not later than March 21st, 1936, that is to say, more than two weeks before the plaintiff corporation received its license to do business in Puerto Rico on April 6 [Bill of Complaint, "(7)", R. 5] and within only two weeks after plaintiff had entered into its preliminary agreement for a lease on the building on Marina Street ["(7)", R. 5-6] and more than two weeks before it had begun any expenditure in installing its rectifying plant in the building, which expenditures did not begin until April 6 [Bill of Complaint, "(7)", R. 6], and must have been actually passed by both Houses of the Legislature and sent to the Governor by the adjournment date fixed by the Congress on April 15th, before the plaintiff had incurred any substantial expenditure.

business establishment which is less than 25 meters from a public or private school.

"B. After the thirty (30) days following the taking effect of this Act, no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. * * *.

"C. The following persons shall be entitled to permits upon application:

"(1) **Every person who on February 1, 1936,** possessed a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rectifying, and bottling distilled spirits, and who is" [*was*] "on that date engaged in said business.

"(2) Any other person who may fully comply with the following requisites:

"(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among other particulars, the following specific information:

"(I) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and the insular Laws.

"(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

"(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

"(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

"(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico."

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.[9]

"(i) The production capacity of existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark

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[9] This absolute prohibition against using THE PROPER NAME of a famous manufacturer on the label was omitted, —and the requirements in this respect softened down,—in the second Act, Act No. 6 of June 30, 1936 (Secs. 40 and 44, quoted *infra*, pp. 18-19).

previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided,* (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

The provisions of this Section 41 of that first "experimental" Act of May 15, 1936, were elaborated [and in some respects softened down] by sections 40 and 44 of the second Act of the series, Act No. 6, *supra,* of June 30, 1936 (Laws of Special Session of 1936, pp. 44, 76, 78), which was likewise temporary in nature, to remain in effect for only fifteen months, "until September 30, 1937, as it" [likewise] "has provisions of an experimental character" (Sec. 106, at p. 112); and were again re-enacted and further somewhat elaborated by the third Act, Act No. 149 of May 15, 1937, Laws of 1937, pp. 392-396, *supra,* which the plaintiff-petitioner now assails.

Pertinent portions of both of those Acts are in the Appendix [*infra,* pp. 62-68].

The second Act, Act No. 6 of June 30, 1936, *supra,* added the provision (Sec. 44, Laws of 1936, Special Session, p. 78; Bill of Complaint, R. 10; Appendix, *infra,* p. 63):

> "*Provided, further,* That distilled spirits, with the exception * * * industrial alcohol * * *, may be exported from Puerto Rico only in containers holding not more than one gallon".

The third Act of the series, Act No. 149 of May 15, 1937, softened this last prohibition by permitting exportation in bulk where any rectifier "wishes to withdraw from business and to liquidate his stock of rum, provided said stock does

not exceed 30,000 gallons" (Sec. 4, adding "Section 44(b)" to Act No. 6; Laws of 1937, p. 394; Appendix, *infra,* pp. 65-66; Bill of Complaint, R. 14).

That Act converted Act No. 6 into permanent legislation (Sec. 6, amending Section 106 of Act No. 6), extending it

> "for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of an experimental nature" (Laws of 1937, p. 395; Appendix, *infra,* p. 67);

and changed the provisions of Sections 40 and 44, concerning the labeling of rum, so as to make them read (Laws of 1937, pp. 393-394; Appendix, *infra,* pp. 65-66; *Confer,* Bill of Complaint, pp. 12-14):

> "Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum,* in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (⅛) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified,* or *blended,* as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further,* That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the

letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears.

"Section 44.—No holder of a permit granted in accordance with the provisions of this or any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *Provided*, That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

And this further limitation to the *Proviso* in Section 44 was added by a new section (Sec. 7 of Act No. 149; Laws of 1937, p. 396; Appendix, *infra*, p. 68):

"Section 7.—In regard to trademarks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trademarks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1st, 1936, provided such trademarks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date."

A "declaration of policy" was added (Sec. 1, amending Section 1 of Act No. 6; Laws of 1937, p. 393; Appendix, *infra*, pp. 64-65); and a new sub-section [97(b)] added to Section 97, authorizing the "holder of a permit obtained under the provisions of this Act or of any other Act" to

"appeal to a court of competent jurisdiction" for "protection against violations of this Act on the part of other persons" (Laws of 1937, p. 395; Appendix, *infra*, p. 67).

Appended as an exhibit to plaintiff-petitioner's bill of complaint is a copy of a "Memorial Addressed to the Legislature of Puerto Rico by Puerto Rican Producers" (R. 39-60), dated "February, 1937," which, however, the District Court rejected when plaintiff offered it in evidence on the trial (R. 130-131).

The grounds upon which the bill of complaint assails (R. 15-22) these sections of Act No. 149 [and of Act No. 6 as amended by Act No. 149] are summarized in JUDGE COOPER'S opinion in the District Court (R. 95) as above quoted (*ante*, p. 11).

ANSWERS TO THE BILL OF COMPLAINT

This defendant-respondent, the Treasurer of Puerto Rico, answered (R. 62-73) maintaining the validity of the statute as a valid exercise of the police powers and of the general legislative powers granted to the Legislature of Puerto Rico by the Organic Act and by the Twenty-first Amendment to the Constitution of the United States, and as necessary enactments for the control and regulation of the liquor traffic, within the powers of the Legislature, and especially of the rum industry, and not any denial of due process or of the equal protection of the laws (R. 72-73); and also, as a "separate and distinct defense" that (R. 72):

> "(a) It appears from paragraph (7) of the bill of complaint that plaintiff herein received from defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol.
>
> "(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted him thereunder and from the effects of the said Act insofar as it pro-

vided regulation and control of the liquor traffic by the Government of Puerto Rico up to the present time without even raising any objection to the legality of the said Act."

INTERVENING PETITION AND INTERVENOR'S ANSWER

The intervenor-respondent, Destileria Serralles, Inc., a corporation of Puerto Rico, manufacturing there the rum known as "Don Q," and selling it in the Island and elsewhere, filed a "Petition in Intervention" (R. 73-76), and by leave of court (R. 76-77) an answer as Intervenor (R. 77-92) asserting the validity of the statute, and setting up as its "first", and "fourth" "special and separate defenses" that (R. 91-92), *first*:

> "(a) It appears from paragraph 7 of the bill of complaint that plaintiff herein received from the defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol, and intervener alleges, upon information and belief, that the said permits contain a paragraph which translated from the Spanish language, reads as follows:
>
> > 'This permit is conditioned upon compliance with the provisions of the "Alcoholic Beverages Act" of Puerto Rico and with all regulations applicable in accordance with the laws now in force or which may be in force hereafter, and Federal laws and regulations applicable, and shall remain in force from the date of its issuance and until it may be suspended, revoked, annulled, surrendered voluntarily or terminated by virtue of the provisions of the laws or regulations.'
>
> "(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted it thereunder and intervener is informed and believes that plaintiff has operated under said permits";

and, *fourth*:

"4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that plaintiff herein is barred by his laches to assail the validity of the statutes aforesaid."

Intervenor's "second" and "third" "separate and distinct defenses" (R. 91-92) are assertions of the validity of the statute, on substantially the same grounds upon which this respondent, the Treasurer of Puerto Rico, asserted its validity in his answer (*ante*, pp. 20-21).

HEARING

A preliminary injunction was granted August 23, 1937, *pendente lite* (*recital in opinion*; R. 95); and the case came on for trial in January, 1938 (R. 93-94) on evidence taken in open court, appearing in the "Statement of Evidence" and Exhibits (R. 127-181, and 182-415). Certain original exhibits, labels, samples of advertisements and photographs, and samples of advertisements with pictures [Plaintiff's exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV" and "AW", and Intervenor's exhibits "B", "D", "E", "F", "G", "H", "I", and "J"] were transmitted to the Circuit Court of Appeals as part of the record on appeal (R. 416-419)].

EVIDENCE

Mr. Jose M. Bosch, Vice president of the petitioner, the Bacardi Corporation of America, and also Vice president of the Cuban company, Compania Ron Bacardi of Cuba, and its agent in the United States, who was born in Santiago, Cuba, and married into the Bacardi family (R. 133-134), testified generally as to the Bacardi business, its world-wide character, its advertising, and as to its entry into Puerto Rico (R. 133-174).

He first "arrived in Puerto Rico around the 22nd of February, 1936"; "came to study the possibility of estab-

lishing a plant for the production of Bacardi rum here in the Island" (R. 140). He stated the nature of the relations between the Cuban company and the Pennsylvania company, this plaintiff "Bacardi Corporation of America", and the way in which the rum is made in Puerto Rico, really under the supervision of the Cuban company (R. 133-147).

DISTRICT COURT'S OPINION

The District Court, in its opinion of May 9, 1938, *supra* (R. 95), held the Acts violative of the commerce clause of the Constitution and of the "due process" and "equal protection" clauses of the Fifth Amendment and of Section 2 (Par. 1) of the Organic Act for Puerto Rico.

Formal "findings of facts" and "conclusions of law" were afterwards filed (R. 106-116), and the "Final Decree" entered June 30, 1938 (R. 116-117).

CIRCUIT COURT OF APPEALS

The Circuit Court of Appeals reversed, as before stated (*ante*, "Suggestions", pp. 4-8); and upheld the validity of the insular legislation. [*Unanimous opinion;* R. 429-443; 109 F. (2d) 57].

QUESTION PRESENTED

As above stated (*ante*, "Suggestions", pp. 1-3), the question here presented is substantially whether the Legislature of Puerto Rico may not, for the protection and encouragement of the local industries of Puerto Rico, forbid a foreign corporation from placing on containers of rum manufactured in the Island a label confusingly giving prominence to its world famous (Cuban) name in a way which the Legislature believes might lead the casual purchaser to become confused and might give the foreign corporation an unfair advantage as against local Puerto Rican manufacturers in building up their manufacturing business within the Island. And whether, in order to prevent evasion of that prohibition, the Legislature may not forbid exportation in bulk.

Respondent believes, and the Circuit Court of Appeals held, that the Legislature does possess such power.

Petitioner maintains the contrary, and the District Court sustained some of its contentions, as above stated, and held the legislation invalid; but was unanimously reversed by the Court of Appeals.

STATUTES

The sections of Act No. 6 of the Legislature of Puerto Rico approved June 30, 1936, and of Act No. 149 approved May 15, 1937, which the plaintiff assails, are stated above (*ante*, pp. 17-20), as also the pertinent parts of Section 41 of the earlier kindred statute, Act No. 115, approved May 15, 1936 (*ante*, pp. 13-17). The pertinent parts of Acts Nos. 6 and 149 are in the Appendix (*infra*, pp. 62-68); and are likewise, together with the pertinent parts of the earlier Act 115, of the Regular Session, 1936, in the margin to the opinion of the Circuit Court of Appeals (R. 430-434; 109 F. (2d), 57, 59-62).

Other Constitutional and statutory provisions, federal and insular, are in the appendix (*infra*, pp. 55-62).

ARGUMENT

Point I

The Legislature of Puerto Rico possesses substantially all of the local legislative powers of a State legislature, in all the respects here involved, including the police powers, and particularly the power to regulate or prohibit the manufacture, transportation, sale or delivery or other traffic in intoxicating liquors.

This court said in *People of Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, decided December 6, 1937 (at pp. 260-262):

> "1. Section 14 of The Foraker Act, passed April 12, 1900, c. 191, 31 Stat. 77, 80, provided that the statutory laws of the United States, not locally inapplicable, should have the same force and effect in Puerto Rico as in the United States, with certain exceptions not

material here. Section 27 (p. 82) provided 'That all local legislative powers hereby granted shall be vested in a legislative assembly • • •.' And by Section 32 (p. 83-84), it was provided that the legislative authority 'shall extend to all matters of a legislative character not locally inapplicable • • •'. These various provisions are continued in force by Sections 9, 25 and 37 of the Organic Act of March 2, 1917, c. 145, 39 Stat. 951. These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, in respect to which this court said in *Clinton* v. *Englebrecht,* 13 Wall. 434, 441, that the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; and in *Hornbuckle v. Toombs,* 18 Wall. 648, 655-656, we said: 'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature'. See also *Cope v. Cope,* 137 U. S. 682, 684, where this court, speaking of this typical general provision contained in the Utah Organic Act, said that, with the exceptions noted in the provision itself, 'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State.' In *Maynard v. Hill,* 125 U. S. 190, 204, the essential similarity of the various provisions in respect of the powers of territorial legislatures was pointed out, and it was said that what were 'rightful subjects of legislation' was to be determined 'by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represented.'

"The grant of legislative power in respect of local matters, contained in Section 32 of the Foraker Act and continued in force by Section 37 of the Organic Act of 1917, is as broad and comprehensive as language could make it. The primary question posed by the challenge to the validity of the act under consideration is whether the matter covered by the act is one 'of a legislative character not locally inapplicable.' • • •.

"2. The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories. *Gromer v. Standard Dredging Co.*, 224 U. S. 362, 370; *Porto Rico v. Rosaly y Castillo, supra*" [227 U. S. 270], "p. 274. The effect was to confer upon the territory many of the attributes of *quasi*-sovereignty possessed by the states —as, for example, immunity from suit without their consent. *Porto Rico v. Rosaly, supra.* By those acts, the typical American governmental structure, consist-of the three independent departments—legislative, executive and judicial—was erected. 'A body politic'—a commonwealth—was created. 31 Stat. 79, Sec. 7, c. 191. The power of taxation, the power to enact and enforce laws, and other characteristically governmental powers were vested. And so far as local matters are concerned, as we have already shown in respect of the continental territories, legislative powers were conferred nearly, if not quite, as extensive as those exercised by the state legislatures."

See also, to the same effect, the recent decision, at the present term of this court, March 25, 1940, in No. 582, *People of Puerto Rico* vs. *Rubert Hermanos, Inc.*

Point II

In the exercise of the police power in local legislation the State legislatures exercise all of the unlimited powers of the English Parliament, except in so far as their powers may be expressly limited by the State constitution or by the Federal Constitution or by Congressional legislation pursuant to Constitutional power.

This Court has said:

"* * * the States possess all the powers of the Parliament of England, except such as have been delegated to the United States or reserved by the people."

Munn v. Illinois, 94 U. S. (4 Otto) 113, 124 (WAITE, CH. J.)

Point III

The police power, as habitually exercised by the State legislatures, extends to the enactment of laws to promote good order and the general welfare of society, as well as the safety, health and morals of the community.

It extends, particularly, to the enactment of laws for the regulation, transportation, sale and delivery of intoxicating liquors.

Point IV

The Twenty-first Amendment to the Constitution leaves the States and Territories wholly free to adopt and enforce such regulations as they may see fit concerning "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors", and expressly forbids violations of such local laws.

The purpose of that provision in Section 2 of the Amendment is

> "to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes". *State Board of Equalization of California vs. Young's Market Co.*, 299 U. S. 59, 62; *Mahoney, Liquor Control Commissioner of Minnesota vs. Joseph Triner Corp.*, 304 U. S. 401, 403, 404.

And, as was held in *Ziffrin, Inc.* vs. *Reeves, supra,* 308 U. S. 132, 138-139:

> "Without doubt a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them * * *.
>
> "Having power absolutely to prohibit manufacture, sale, transportation or possession of intoxicants, was it permissible for Kentucky" [*Puerto Rico*] "to per-

mit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. The greater power includes the less. * * * The State may * * * exercise large discretion as to means employed."

Point V

The commerce clause is not applicable to Puerto Rico. It relates only to commerce between the States of the Union.

A. The Circuit Court of Appeals for the First Circuit said in *Lugo* vs. *Suazo,* 59 F. (2d) 386, 390, June 7, 1934 [followed in its opinion in the present case; R. 435-436; 109 F. (2d) 57, 62-63]:

"The commerce clause does not extend to Puerto Rico."

B. The language of the commerce clause is (Clause 3, Section 8, Article I):

"The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

C. Manifestly, that language relates only to the States of the Union, and to commerce among themselves and with foreign nations and with the Indian tribes. The Circuit Court was plainly correct, therefore, in its holdings in the *Lugo* vs. *Suazo case, supra,* and in the present case, that the commerce clause does not extend to Puerto Rico.

D. It follows that the District Court was in error in holding in this case that the Acts of the Legislature of Puerto Rico here involved are violative of the commerce clause of the Constitution (R. 104-105, 116 ["14"]; and that the Circuit Court of Appeals was right in overruling the District Court, in this respect. The commerce clause is not here involved.

E. The constitutional relation between the legislative jurisdiction of the Congress and that of the Legislature of Puerto Rico is vitally different in this respect from the Constitutional relation between the

legislative jurisdiction of the Congress and that of the State legislatures. In determining the validity of a Puerto Rican statute the question is not whether it invades the commerce clause, or invades powers which, with relation to the States, are exclusively vested in the Congress; but the test is simply whether it exceeds the powers granted to the Puerto Rican Legislature by the Organic Act and other Acts of Congress.

F. Puerto Rico is not a "State" within the meaning of that term as it is employed in the commerce clause and elsewhere in the federal Constitution, as, for example, in the Fourteenth Amendment.

Puerto Rico is a Territory of the United States; an organized Territory, although not yet formally "incorporated" into the Union. *People vs. Shell Co., supra,* 302 U. S. 253, 257-259. In legislating with respect to Puerto Rico the Congress acts by virtue of the authority given it by Article IV, Section 3, clause 2, of the federal Constitution, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". The federal Constitution applies to Puerto Rico in a general sense only,—in the sense that, as was observed by CHIEF JUSTICE TAFT in the *Balzac* case (*Balzac vs. People of Porto Rico,* 258 U. S. 298, 312):

> "The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. * * *. The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements."

Many of its provisions are inapplicable in or to Puerto

Rico, either because of express terms that limit their application to the States [such as the commerce clause and the Fourteenth Amendment] or to other subjects not pertinent in any way to the Territories, or to a Territory such as Puerto Rico not yet formally "incorporated" into the Union; or because, not being in their nature among those clauses which embody "guaranties of certain fundamental personal rights declared in the Constitution" [*Balzac vs. Porto Rico, supra,* 258 U. S. 298, 312], some of the provisions of the Constitution do not limit the action of the Congress in legislating, under Article IV, for the "Territory or other Property belonging" to the United States. For example, this Court has held inappplicable in or to Puerto Rico the provisions of the Fifth Amendment prohibiting criminal prosecutions without prior indictment (*Porto Rico vs. Tapia* and *Porto Rico vs. Muratti,* 245 U. S. 639), the provisions of the Sixth Amendment guaranteeing the right of trial by jury (*Balzac vs. Porto Rico, supra,* 258 U. S. 298), the provisions of Article I, Section 8, Clause 1, requiring that all duties, imposts and excises shall be uniform throughout the United States (*Downes vs. Bidwell,* 182 U. S. 244), and the provisions of Article I, Section 9, Clause 5, that no tax or duty shall be laid on articles exported from any State (*Dooley vs. United States,* 183 U. S. 151).

G. Of course, with respect to the regulation of commerce between Puerto Rico and the States, as well as between Puerto Rico and other Territories, and with foreign nations, the Congress possesses, under the "territorial clause" above mentioned (Article IV, Section 3, Clause 2), the same complete and exclusive powers it possesses, under the "commerce clause", with relation to interstate commerce between the States of the Union. *There remains, however, a sharp distinction between the principles involved,* on the one hand, in a determination whether a statute of a State invades the exclusive power of the Congress under

the commerce clause of the federal Constitution and other clauses relating to the States of the Union, and, on the other hand, those principles affecting a determination of the question whether a statute of the Puerto Rican Legislature exceeds the powers which the Congress has granted to that body by the Organic Act.

This is because, in the case of Puerto Rico, the Congress has by the Organic Act (Secs. 25 and 37, Act of March 2, 1917, 39 Stat. 951, 958, 964; Appendix, *infra*, p. 55) delegated all of its own local legislative powers with respect to that Island to the insular Legislature, except as otherwise prescribed or limited by that Act or other acts of the Congress.

It follows that *the Legislature* of Puerto Rico, *in legislating locally* for the government and the people of Puerto Rico *can do anything which the Congress itself could do,* except in so far as otherwise limited by the Organic Act or other acts of Congress. *Haavik vs. Alaska Packers Association,* 263 U. S. 510, 514; *Rafferty vs. Smith, Bell & Co.,* 257 U. S. 226, 232; *United States vs. Heinszen & Co.,* 206 U. S. 370, 385-386; *People vs. Shell Co., supra,* 302 U. S. 253, 259 *et seq.*

H. Hence **The Legislature of Puerto Rico** in legislating, as in the Acts here in question, in the exercise of its police powers, for the public welfare of Puerto Rico, the protection or development of its local industries, or for the health or welfare of its people, is, in so far as the "commerce clause" is concerned, **or in so far as commerce between Puerto Rico and the States or foreign nations is concerned, is restrained only by the provisions of the Organic Act, or other pertinent acts of Congress, if any;** and is not, as is the legislature of a State, confronted with the barrier of exclusive jurisdiction over interstate commerce vested in the Congress by the "commerce clause" of the Constitution.

I. Any question of whether a Puerto Rican statute affecting overseas commerce with the Island, or between the

Island and the mainland, or with other Territories, is invalid because of supposed conflict with the legislative jurisdiction of the Congress, is to be determined, not by any reference to the commerce clause of the federal Constitution and the many judicial interpretations of that clause and its bearing on State statutes, but, on the contrary, is to be determined solely by reference to the powers and limitations of the Puerto Rican Legislature prescribed by the Organic Act and other acts of the Congress.

Direct regulation of interstate commerce is a field of legislative jurisdiction barred to the States of the Union by the federal Constitution. It is a field into which they cannot enter, even where it has been left unoccupied by the Congress, excepting in so far as they are permitted to impose reasonable regulations in the exercise of their legitimate police powers. On the other hand, in the case of the Legislature of Puerto Rico, the situation is exactly reversed. In the latter case, the Congress having extended a general grant of all of its own local legislative powers to the Puerto Rican Legislature, subject only to specified statutory exceptions and limitations, the Legislature can enter into and occupy any part of the field from which it is not excluded by some express provisions of the Organic Act, or by some other act of Congress, if any there be, limiting its powers in the direction in question. *People of Puerto Rico* vs. *Shell Co., supra,* 302 U. S. 253, 259-263; *People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra,* No. 582 at the present term of this Court, March 25, 1940.

Point VI

Even the States of the Union bound by the commerce clause of the Constitution are not prevented by it from legislating in the exercise of their police powers, with relation to intoxicating liquors, forbidding, for example, the manufacture of such liquors within the State or making such regulations as the Legislature may see fit concerning their production within the State.

The legislature may in the exercise of its police powers forbid manufacturing such products within the State, or putting them into the stream of interstate commerce, within the State, except upon such terms and conditions as it may direct. *Ziffrin, Inc.* vs. *Reeves, supra,* 308 U. S. 132, 138-139.

So also, with relation to food products, such as oleomargarine, unless so packed and labeled as to prevent deception or confusion.

The commerce clause does not prevent the exercise of the State's local police power, so long as it does not conflict with legislation of the Congress upon the particular subject. *Milk Control Board of Pennsylvania vs. Eisenberg Farm Products,* 306 U. S. 346, 351-352; *Chassoniol vs. City of Greenwood,* 291 U. S. 584, 587; *Hammer vs. Dagenhart,* 247 U. S. 251; *Bacon vs. Illinois,* 227 U. S. 504; *Western Union Tel. Co. vs. Crovo,* 220 U. S. 374; *N. Y. & N. H. vs. N. Y.,* 165 U. S. 628; *Gulf C. & S. F. R. Co. vs. Hefley,* 158 U. S. 98; *Coe vs. Errol,* 116 U. S. 517.

Point VII

The fact that the Congress itself has chosen not to legislate in any particular field does not imply any prohibition against the Legislature of Puerto Rico enacting local legislation in that field; nor does the fact that the Congress has chosen to legislate generally in any particular field imply any prohibition against the Legislature of Puerto Rico enacting local legislation in the same field; so long as the local insular legislation does not conflict with the legislation of the Congress.

This Court expressly so held in the *Shell Company* case. The court there said (*People of Puerto Rico* vs. *Shell Co., supra,* 302 U. S. 253, 263):

> "In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made mani-

fest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act, and Sec. 32 of the Foraker Act. Nothing is expressed in these acts or, so far as we are advised, in any other federal act which suggests a congressional intent to limit the exercise of the power of local legislation to those subjects in respect of which there is an absence of explicit legislation by Congress; and we find nothing in the nature of the power or in the consequences likely to ensue from the duplicate exercise of it which requires an implication to that effect."

And see also, to the same effect, the recent decision at this Term, in *People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra,* No. 582.

Point VIII

There is nothing in the acts of the Legislature of Puerto Rico here involved in conflict in any way with the Federal Alcohol Administration Act.

The District Court refused to find with the plaintiff-petitioner corporation on this issue. To the contrary, the court refused a "conclusion of law" on this point requested by the plaintiff. Plaintiff saved a formal exception the court's refusal (R. 117-118), but did not assign any cross-errors in the Circuit Court of Appeals. This question, therefore, is not properly here in issue in this case, and was not properly before the Circuit Court. That court, nevertheless, considered it, and agreed with the District Court that there is no violation of the Federal Act. [Opinion, R. 436-438; 109 F. (2d) 57, 63-64; "Suggestions", *ante,* p. 4]

On its face the Federal Alcohol Administration Act contains no prohibition against the States adding additional requirements not in conflict with those prescribed by the federal act. (Act of August 29, 1935, c. 814, 49 Stat. 977 *et seq.*)

To the contrary, its wording expressly contemplates possible additional requirements of "State law" [*e.g.* Sec. 5(e), par. 2, 49 Stat. at p. 983; Appendix, *infra*, p. 59].

Clearly, therefore, the District Court and the Circuit Court were right in refusing to consider the Federal Alcohol Administration Act as having any bearing in this case. The approval of plaintiff's "Carta de Plata" label (Plaintiff's Exhibits "N-1" and "N-2") by the Federal Alcohol Administration (Plaintiff's Exhibit "N") is immaterial here. The administrator's approval was not intended to authorize the plaintiff to override the local Territorial law. It does no such thing.

Petitioner cites no conflicting decisions.

Point IX

The acts of the Legislature of Puerto Rico here in question are not in conflict in any way with the Convention between the United States and Cuba proclaimed February 27, 1931 ("Treaty Series' 833; 46 Stat., Pt. 2, p. 2907).

A. As above pointed out ["Suggestions", *ante*, pp. 4, 8-9] the Circuit Court of Appeals determined (R. 438) that the District Court had correctly so held in refusing the proposed "conclusion of law" which the plaintiff requested on this point [to which refusal the plaintiff-petitioner saved a formal exception (R. 118), but has assigned no cross-error]. The District Judge said in his opinion (R. 105):

> "It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power."

B. In so holding the District Judge was clearly right, as the Circuit Court says [R. 438, *supra;* 109 F. (2d) 57, 64]. The purpose of the Convention was to prevent piracy of trade-marks, which is not here involved in any way. Unlike a patent, the registration of a trade-mark under the general Act is not the grant of a positive right to use the registered mark, and does not authorize the registrant to project the trade-mark into new territory in violation of the local laws. The acquisition of property rights in trade-marks rests upon the laws of the several States and Territories. *American Trading Co. vs. Heacock Co.,* 285 U. S. 247, 257-258; *United Drug Co. vs. Rectanus Co.,* 248 U. S. 90, 98; *American Steel Foundries vs. Robertson,* 269 U. S. 372, 381; *United States Printing & Lithograph Co. vs. Griggs, Cooper & Co.,* 279 U. S. 156, 158. *Confer* also *Hanover Star Milling Co. vs. Metcalf,* 240 U. S. 403, 412. [*Confer,* also, "Suggestions", *ante,* pp. 8-9].

Point X

The acts here assailed do not violate the due process clause of the Fifth Amendment, nor the provisions of the first clause of Section 2 of the Organic Act guaranteeing due process and equal protection of the laws.

It necessarily follows from what has heretofore been said that the only remaining ground upon which petitioner can seek to sustain the decree of the District Court, and to override the unanimous judgment of the Circuit Court of Appeals, is its contention that the insular statutes here assailed violate the provision of the Fifth Amendment,

> "nor shall any person * * * be deprived of life, liberty, or property, without due process of law,"

or that of the first clause of Section 2 of the Organic Act for Puerto Rico (c. 145, 39 Stat. 951, substantially an embodiment of the "due process" clause of the Fifth Amendment):

"Sec. 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

This is the substantial question in this case. The District Court resolved it against the validity of the statutes (*Opinion,* May 9. 1938; R. 95, 96-99); but the Circuit Court of Appeals unanimously reversed, and upheld the validity of the insular legislation. [*Confer,* "Suggestions", *ante,* pp. 4-8, and the quotation there (at pp. 5-8) from the opinion of the Circuit Court of Appeals, which is believed manifestly correct].

Point XI

In approaching this question several basic considerations are to be kept in mind.

A. As above pointed out (*ante,* Points I, II, III, pp. 24-27), and as was held by the Court of Appeals [R. 440-441, *supra*], the Legislature of Puerto Rico in enacting these statutes was *exercising its legislative local police power* for the welfare of the community and for the protection and encouragement of its local industries. In the exercise of that power it was clothed with all of the powers of a State legislature, and with all of the powers which the Congress could itself exercise in such local legislation,—substantially all of the broad powers of the English Parliament in this respect.

B. It was exercising these powers *with respect to the manufacture and traffic in intoxicating liquors,* a subject universally conceded to be peculiarly within the scope of the police powers of the local legislature. [*Confer, Ziffrin, Inc.* vs. *Reeves, supra,* 308 U. S. 132, 138-139].

C. It was,—as appears not only from the substance of both Act No. 6 of June 30, 1936, and Act No. 149 of May 15, 1937, but as well also from the substance of the first act of the series, Act No. 115 of May 15, 1936, and also, ex-

pressly, from the "declaration of policy" put into Section 1 by Act No. 149 of May 15, 1937,—intending to exercise its police powers to protect the welfare of the community and to protect and develop its local industries by enacting legislation [*"Declaration of Policy"*, Sec. 1(b), Act No. 149, Laws of 1937, pp. 392, 393; Appendix, *infra*, pp. 64-65],

[1] "to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital",
[2] "so as to avoid the increase and growth of financial absenteeism",
[3] "and to favor said domestic industry",
[4] "so that it may receive adequate protection against any unfair competition",
[5] "in the Puerto Rican market",
[6] "in the continental American market",
[7] "and in any other possible purchasing market".

D. This legislative purpose was certainly, as the Circuit Court of Appeals says [R. 440; 109 F. (2d) 57, 65] a "legitimate" purpose.

E. This legislative purpose to protect the local "renascent liquor industry" from "competition by foreign capital", and to "avoid the increase and growth of financial absenteeism", is quite in line with recent developments of legislative policy in a number of the States of the Union, particularly in relation to the manufacture and transportation and sale of intoxicating liquors.

For example, there are the statutes of CALIFORNIA discriminating against beer produced anywhere outside of that State [so-called "foreign beer", although perhaps produced in some other State of the Union]; MINNESOTA, discriminating against any liquors produced outside of that State [by forbidding bringing any such liquors into the State containing more than 25% of alcohol "ready for sale without further processing", *unless* bearing brands registered in the United States Patent Office]; PENNSYLVANIA, discriminating against [a] beer produced outside of the

borders of the State, as well as [b] sales by corporations having non-resident stockholders and officers [by means of license fees discriminating against distributors of beer produced outside of the State, and by forbidding sales of beer without a license, and forbidding a license to any corporation "unless all its officers and directors, and fifty-one per cent of its stockholders have been residents of the State for the period of at least two years"]; KENTUCKY, rigidly regulating the manufacture, sale, transportation, and possession of intoxicating liquors.

Cases involving the validity of the statutes of these four States, respectively, have recently come before this Court, and the statutes have been sustained. *State Board* vs *Young's Market Co.*, 299 U. S. 59; *Mahoney vs. Triner Corp.*, 304 U. S. 401; *Premier-Pabst Co. vs. Grosscup*, 298 U. S. 226; *Ziffrin, Inc.* vs. *Reeves, supra*, 308 U. S. 132, 134, 138-139.

F. The mere fact of the existence of such a wide-spread sentiment and legislative policy among the States of the Union, along lines of thought quite analogous to the policy of the Legislature of Puerto Rico in enacting these statutes, to protect and encourage the growth of local manufacturing liquor industries, and to permit them to recover from the enforced stagnation of the National prohibition period, —*"the renascent liquor industry of Puerto Rico"*,—as well as to protect them from foreign competition, is in itself evidence of the reasonableness of such a policy, and affords strong grounds for a presumption of the constitutionality of the statutes here assailed.

This Court, speaking by CHIEF JUSTICE HUGHES, in *West Coast Hotel Co.* vs. *Parrish*, 300 U. S. 379, 399, has recently said:

> "The adoption of similar requirements by many States evidences a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it. **Legislative response to that conviction cannot be**

> regarded as arbitrary or capricious, and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment." (*Emphasis supplied.*)

G. Similarly, as the Court of Appeals noted [R. 440; *ante,* pp. 5-6], the persistence of this policy through three successive sessions of the Legislature of Puerto Rico,—the regular session of 1936, the special session of 1936, and the regular session of 1937,—and the adoption of legislation along these same lines at each one of those three successive sessions,—experimental in character in the first Act; likewise experimental in the second Act, but to remain in effect for a longer period of time; and then, finally, making the legislation permanent in the third Act,—is in itself entitled to consideration as indicative, in the words of the Chief Justice, of *"a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it"*,—a deep-seated persistent conviction throughout the Island.

H. The right to enter into a business, or to carry it on, like the right to contract, is not an absolute or unqualified right; but is one of those forms of the "liberty" guaranteed by the due process clause which, like other forms of liberty, is, as was said in *West Coast Hotel Co. vs. Parrish, supra,* 300 U. S. 379, 391,

> "necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

I. Particularly is this limitation to be remembered in the case of a foreign,—*or alien,*—corporation seeking to do business within a State or Territory. Even with relation to a so-called "foreign corporation" which is "foreign"

only in the sense that it is organized under the laws of some other State or Territory of the United States, the local legislature may wholly deny it the right to do business within the local jurisdiction. And where the right wholly to deny entry exists, the Legislature in permitting entry may couple the permit with limitations or conditions. [*Confer Baltimore & Ohio R. Co. vs. Lambert Run Coal Co.*, 267 Fed. 776, 781 (C.C.A.-IV; certiorari denied, 254 U. S. 651); *Ziffrin, Inc. vs. Reeves, supra,* 308 U. S. 132, 138-139].

And especially is this true, as above noted (*ante,* p. 3) with reference to a foreign corporation engaging in the manufacture or sale of intoxicating liquors.

J. The foregoing principle is peculiarly applicable in the case of an **alien corporation** asking to do business within a State or Territory. Neither the "due process" clause nor the "equal protection" clause gives any right to an alien corporation to require a State or Territorial legislature to permit it to do business within the State or Territory, nor gives it any right to object to any conditions or limitations that the legislature may see fit to impose upon permitting it to come within the jurisdiction to do business.

Memorandum. This principle is directly applicable here. While, nominally, it is the Pennsylvania corporation, the Bacardi Corporation of America, which is registered to do business in Puerto Rico, yet in fact, the evidence and the findings of the District Court show that it is **really the alien corporation,** Compania Ron Bacardi, S. A. of Cuba, which is seeking to force its way in to do business in Puerto Rico, and is challenging the validity of the local statutes standing in its way. The District Court, upon the testimony of the plaintiff's witness, Mr. Jose M. Bosch, Vice-president (R. 133)

of both the "Bacardi Corporation of America" and also of the Cuban Company, "Compania Ron Bacardi, S. A.", expressly found, (Opinion, R. 103-104):

> "It seems to me that the right of the Cuban company, * * * would have a right to employ an *agent* in Continental United States *to manufacture rum Bacardi for the account of the Cuban company, * * *. And stripped of all legal formalities that is what the contract here in question really is.* The label is to be used only on rum manufactured in accordance with the formula owned by the company, and is to be produced under the personal supervision of an authorized agent of the Cuban company. The testimony further shows that the Cuban company has a substantial participation in the profits of the American company."[10] (*Italics supplied.*)

K. *In relation to intoxicating liquors* [at least], *the Legislature even possesses the power to withdraw a license*

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[10] It is to be borne in mind that since, as heretofore pointed out (*ante*, Point V, pp. 28-32) the commerce clause of the Constitution is not applicable in Puerto Rico; and since the Trade-mark Convention with Cuba, in view of the basic law with relation to the nature of trade-marks, does not enable the alien corporation to project its trade-marks into a State or Territory in defiance of the local laws; and in view of the fact that there is no limitation by the Organic Act or by any other act of Congress upon the full freedom of the Legislature of Puerto Rico in this respect, it follows that *there is no requirement of federal Constitution or law* upon which this alien Cuban corporation can rely to compel the Legislature of Puerto Rico to permit it to come into the Island and there to enter into the business of manufacturing liquor to be labeled with its foreign trade-marks, as it has never done prior to the enactment of the local statutes here in question. The Convention does not clothe it with any such power to override the local Territorial Legislature.

theretofore issued to a foreign corporation, even though the foreign corporation has already invested money and built up a business under it. *Mahoney vs. Triner Corp., supra,* 304 U. S. 401, 404. In that case this Court, speaking by MR. JUSTICE BRANDEIS, in dealing with the Minnesota statute to which reference has already been made (*ante,* p. 38), said (at p. 404):

> "*Third.* The fact that Joseph Triner Corporation had, when the statute was passed, a valid license and a stock of liquors in Minnesota imported under it, is immaterial. **Independently of the Twenty-first Amendment, the State had power to terminate the license.** *Mugler v. Kansas,* 123 U. S. 623; *Premier-Pabst Sales Co. vs. Grosscup,* 298 U. S. 226, 228." (*Emphasis supplied.*)

L. In enacting laws with relation to intoxicating liquors, as with other laws enacted in the exercise of the police power, **the Legislature is primarily the judge of the necessity of the enactment.** *West Coast Hotel Co. vs. Parrish, supra,* 300 U. S. 379, 398; *Nebbia vs. New York,* 291 U. S. 502, 537, 538.

Thus this Court said in the *West Coast Hotel Co.* case, *supra,* 300 U. S. 379, 397-398:

> "In *Nebbia v. New York,* 291 U. S. 502 * * * we again declared * * *; that 'with the wisdom of the policy adopted, *with the adequacy or practicability of the law enacted to forward it,* the *courts are both incompetent and unauthorized to deal*'; that 'times without number we have said that *the legislature is primarily the judge of the necessity* of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.' " (*Italics supplied.*)

M. *The Legislature possesses wide powers of classification* in relation to the objects and persons to be affected by its legislation. The "equal protection" clause of Section 2 of the Organic Act for Puerto Rico [substantially

like the similar clause in the Fourteenth Amentment, which does not extend to Puerto Rico] does not substantially change or enlarge the effect of the "due process" clause of the Fifth Amendment [which is likewise embodied in Section 2 of the Organic Act]. Taken together, these clauses simply require that State [or Territorial] laws apply alike to all persons similarly situated. They do not prevent, or further limit, classification by the Legislature. *Currin vs. Wallace,* 306 U. S. 1, 14; *Borden's Farm Products Co. vs. Ten Eyck,* 297 U. S. 251, 261-264; *Nebbia vs. New York, supra,* 291 U. S. 502; *Borden's Farm Products Co. vs. Baldwin,* 293 U. S. 194, 210; *Barrett vs. State of Indiana,* 229 U. S. 26.

N. **There is a strong presumption in favor of the validity of the legislative action.** He who assails the constitutionality of a statute must be prepared to show that it is *clearly* unconstitutional. The burden is upon him "to make a convincing showing". *Townsend vs. Yeomans,* 301 U. S. 441, 451.

As the Court of Appeals said [R. 441; *ante,* p. 6]:

> "* * * *doubt is not enough,* that unconstitutionality must clearly appear in order to warrant us in holding legislation void." (*Italics supplied.*)

The rule has been re-stated innumerable times. *Confer,* e.g., *Green vs. Frazier,* 253 U. S. 253.

O. **The broad and varied powers of the Legislature in the classification and regulation of industry,** even where not so clearly affected with a public interest as is the manufacture and dealing in intoxicating liquors, **are illustrated in a wide range of cases. Examples are:**

> *Florida—Miami Laundry Co. vs. Florida Dry Cleaning & Laundry Board,* Fla. ; 183 Sou. 159. Fixing minimum prices for laundry and dry cleaning.

Florida—Mayo, Commissioner vs. The Polk Co., 124 Fla. 534 (169 Sou. 41); appeal dismissed for want of a substantial federal question, 299 U. S. 507, 508. "Bond and License Law" of 1935 requiring licenses for citrus fruit dealers and canners.

Florida—United States vs. Rock Royal Co-op., Inc., 307 U. S. ; 59 Sup. Ct. 993, 1007-1009. Act sustained, although specifically exempting co-operatives, and applicable to independent canners only.

Georgia—Townsend vs. Yeomans, 301 U. S. 441. Maximum charges handling and selling leaf tobacco.

Illinois—Munn vs. Illinois, 94 U. S. 113. Regulating prices to be charged by grain elevators.

New York—Nebbia vs. People of New York, supra, 291 U. S. 502. Regulating milk prices.

New York—Hageman Farms Corp. vs. Baldwin, 293 U. S. 163. Milk prices.

North Dakota—Brass vs. State of North Dakota, 153 U. S. 391. Maximum charges for storage.

Pennsylvania—Milk Control Board of Pennsylvania vs. Eisenberg Farm Products, supra, 306 U. S. 346. Milk prices.

Washington [State]. *West Coast Hotel Co. vs. Parrish, supra*, 300 U. S. 379. Minimum wages for women.

Point XII

It is in the light of the foregoing principles that the general rule is to be approached.

A. **The general rule is,** as it was stated in the *West Coast Hotel Co.* case, *supra*, 300 U. S. 379, 391, that:

> "regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process".

B. In determining whether the remedy chosen by the Legislature in the exercise of its broad discretionary powers

so far exceeds that which may be allowed to be "reasonable" in relation to its subject, or is so widely astray from any apparent public purpose that it cannot be said to be "adopted in the interests of the community", all of the foregoing principles must be borne in mind. As was said by MR. JUSTICE ROBERTS speaking for the court in *Borden's Farm Products Co. vs. Ten Eyck, supra,* 297 U. S. 251, 263:

> "Judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary. *Standard Oil Co. v. Marysville,* 279 U. S. 582, 586-587".

And, as this Court has likewise said:

> "The court does not sit as a board of revision to substitute its judgment for that of the Legislature". (*St. Joseph Stock Yards Co. v. United States,* 298 U. S. 38, 51).

Point XIII

Considered in the light of the foregoing established principles, the acts of the Legislature of Puerto Rico here assailed do not violate the "due process" or the "equal protection" clause. They are valid enactments of the local legislative power.

WHEREIN DO THEY OFFEND?

A. The District Court says (Opinion, R. 96):

> "when the police power is invoked two things must appear. First, an evil; second, a remedy calculated to correct the evil."

He then, "applying this principle to the instant case" quotes the "declaration of policy" in Section 1(b) of Act No. 149 of May 15, 1937 (*Appendix, infra,* pp. 64-65), and says (R. 97): "Here we have the evil". He then asks "What is the remedy provided by the act?"; and,

after quoting Section 44 (*ante,* p. 19), continues (R. 97), without further analysis:

> "Does the remedy provided correct the evil complained of? It is difficult to see how anyone can urge that it does."

This is all that he says upon the question. That is his decision. The following pages of the opinion are devoted to distinguishing cases (R. 97-102) relied upon by the defendant and the intervenor, and to discussion of the interstate commerce clause (R. 102-105), which he erroneously considers applicable here, and applies, and which he holds the *proviso* to Section 44(b) of the Act (Laws of 1937, at p. 394; Appendix, *infra,* p. 66) forbidding shipment of distilled spirits [except industrial alcohol, etc.] out of Puerto Rico in containers holding more than a gallon, violates, and therefore to be invalid, *wholly overlooking* the established rule (*ante,* Point V, pp. 28-32) that THE INTERSTATE COMMERCE CLAUSE IS NOT APPLICABLE TO PUERTO RICO AT ALL.

The Circuit Court of Appeals correctly overruled the District Court in this; correctly upheld the validity of the legislation [R. 438-443, *supra; ante,* "Suggestions," pp. 4-8].

B. The District Court set up his own individual opinion in opposition to that of the elected representatives of the people in the Legislature upon these questions of fact and of policy. He says (R. 97, *supra*), as above quoted: "Does the remedy provided correct the evil complained of?". And he answers his own question by saying: "It is difficult to see how anyone can urge that it does."

But the members of the Legislature, presumably familiar with local business and social conditions in the Island, have found that it does; and have enacted it into law. The District Court admits that the protection and encouragement of local industries, and discrimination in their favor as against foreign corporations, and particularly as against alien corporations and alien business, and the discourage-

ment or prevention of "financial absenteeism" and, particularly, the protection of "the renascent liquor industry of Puerto Rico" in building it up, after the enforced stagnation by the National prohibition era, are legitimate legislative purposes. But the District Court thinks that the particular remedy adopted by the Legislature in these statutes is not well adapted to those purposes.

C. But, as the Circuit Court of Appeals pointed out (R. 440, *supra; ante,* pp. 5-6), the members of the Legislature, persistently, through three successive legislative sessions have adhered to the opinion that it is; and after twice adopting it experimentally in the two earlier Acts of the series have finally enacted it into permanent legislation by the third Act (Act No. 149 of May 15, 1937), here before us. And it may be suggested that, as a practical matter, and as an effective,—as perhaps the most effective,—practical means of checking "financial absenteeism" in relation to this particular matter of the manufacture of distilled spirits, and especially of rum, in Puerto Rico, and of protecting the Island's "renascent liquor industry" from the devastating competition, while it is being built up, of alien businesses backed by vast aggregations of capital, with world famous names and brands giving them many of the advantages of monopolistic control of the market, the really most effective way was to strike at the use of their alien names and brands in labeling distilled spirits, especially rum, produced in the Island.

Who shall say that the Legislature is not entitled to its opinion on this question; or that its opinion is so merely foolish and unreasonable that it may be disregarded by the courts;—that is to say, that it is so "unreasonable" that "no reasonable man" can be imagined as believing in it.

D. "The proof of the pudding is in the eating". Perhaps the best proof of the effectiveness of the Legislature's remedy is this very lawsuit itself. Here is this great world

famous Bacardi organization, with its world famous "Bacardi" brands, anxious to invade the rum manufacturing field in Puerto Rico, and to throw its world famous name into competition with the local Puerto Rican manufacturers; ready, as it itself says (*Bosch, testimony,* R. 138) to spend $2,000,000 or more for that purpose,—[and saying that it costs at least $2,000,000 properly to establish such a business in a new field, which shows what the local manufacturers are facing in endeavoring to build up their "renascent liquor business of Puerto Rico" which the Legislature properly desires to protect],—now finding its designs checked by this very remedy adopted by the Legislature. Hence, it brings this lawsuit; and says that, unless it can have its injunction, it will be "irreparably injured"; that it cannot go ahead in Puerto Rico.

Is not the Legislature's remedy proven effective? Has it not shown itself well adapted to cure the evils stated in the legislative "declaration of policy"?

E. It may also be suggested that there now appears to be another evil attendant upon "financial absenteeism" with respect to this particular industry, the existence of which is developed by the plaintiff's own evidence in this case. Plainly the purpose of this Cuban Bacardi organization in seeking to invade the rum manufacturing field in Puerto Rico is *to come within the United States tariff wall,* so as to be able to manufacture their rum in Puerto Rico and to bring it into the continental United States duty free,—and thereby to save paying the federal Treasury some $4.50 per case in United States tariff duties. But when they undertake to do that, in the manner they do, the Legislature may well have believed that they manifestly *injure the business reputation and the trade of Puerto Rico, generally, in a very serious way.* This goes beyond injury to the Puerto Rican liquor manufacturers, and affects the entire industry of the Island, in the development of which the insular government is necessarily very gravely concerned.

This Bacardi organization possesses and has used for many years, as the evidence in this case shows, brands and labels for rum *"Carta de Oro"* and "Carta Blanca",—its "gold label" and its "white label" ("lined in gold") labels, both world famous [Plaintiff's Exhibits "G" and "H" (*"Carta de Oro"*), and "E" (*"Carta Blanca"*); R. 29, 129, 233-234, 243; 28, 129, 210, 211]. It now proposes to use upon its rum produced in Puerto Rico, not these famous Bacardi gold and white [gold] labels, but on the contrary, a new label which it has adopted and which it calls its "Carta de Plata" ["silver label"] with a different (yellowish) color, and a *silver* triangle in the lower left-hand corner (enclosing the Bacardi "bat" trade mark) (Plaintiff's Exhibits "N-1" and "N-2"; R. 274, 276), instead of the well-known gold triangle in the lower left-hand corner of the famous "Carta de Oro" Bacardi labels.

The silver label immediately connotes something inferior to the gold. It might very easily do that, to the mind of the ordinary purchaser, despite the fact that the rum manufactured by this organization in Puerto Rico may be, as they say it is (Bosch, test.; R. 144-145), made by exactly the same process as the rum they make in Cuba, and under the same supervision, and is just as good in every respect.

Nevertheless the casual purchaser of rum in the continental United States, seeing this Bacardi "silver label" on the bottle offered him at a cheaper price [because of savings in customs duties] than the "gold label" with the gold triangle on it, and than the "white label", might very easily, in nine cases out of ten, think either one of two things: Either (1) that even though marked "Puerto Rican Rum" yet this is rum of the well-known Cuban company, the Bacardi organization, and must be good because it is made by Bacardi, and buys it because of the *Cuban* Bacardi name which he associates with Cuba, and hence with good quality; or else, perhaps more probably, (2) seeing the silver

label, the words *"Carta de Plata"*, and that it is marked "Puerto Rican Rum", he will conclude that it is Bacardi's *second quality* rum and, think that the cheaper price denotes inferior quality, *and will come to associate inferior quality with Puerto Rican rum* in his mind,—and will almost certainly come unconsciously to associate that idea of inferior quality with his thought of all brands of Puerto Rican rum.

The resulting injury, not only to other Puerto Rican producers, but also to Puerto Rican industry generally, is plain. Who shall say that the Legislature of Puerto Rico is without power to prevent it?

F. *The reputation of Puerto Rico as a place from which first quality,*—and not second quality,—*products come is vital to the Island,* to its people, and to all its industries. This court will take a judicial notice of the acts of the Legislature to encourage the sale of Puerto Rican coffee in the mainland United States ["Cafe Rico", "the Coffee of Royalty"], and for the encouragement of what is called "Tourism" in the Island, to make the people of the mainland acquainted with the attractions and with the excellent quality of the products of the Island, and the appropriations of money from the insular Treasury for those purposes, and the campaign to those ends being conducted in the mainland. And of the distressing situation of the Island with reference to its great needlework industry in consequence of the effects of the Trade Agreement with Switzerland and of the "wages and hours" laws, and the consequent necessity of fostering the reputation of high quality for that product, since, with these handicaps, only the finest quality of Puerto Rican needlework and lingerie can be profitably marketed; and similarly as to the tobacco industry. And of the constant necessity to emphasize the high quality of Puerto Rican products, and always to endeavor to off-set what seems to be a nation-wide tendency unconsciously to depreciate them [perhaps just because they are

domestic products, and not "imported" or "foreign," as are those of Cuba],—the constant tendency, for example, to buy a high class hand-made Puerto Rican cigar readily if only it is labeled "Cuban", and to buy highclass Puerto Rican lingerie if it is labeled "French". And so, therefore, it is vital to the Island of Puerto Rico with its tremendously dense population accentuating all of its governmental problems, and vital to all of its industries, that the reputation of one of its products, which it hopes to build up into a very great product,—its rum, shall not be slandered by marketing it in such a manner as to give the erroneous impression that Puerto Rican rum is a product of secondary quality.

The Legislature cannot be said to be without the power to protect Puerto Rican industry in this regard.

G. The District Court says (R. 102) "That whether so intended or not" "the Act has the appearance as being so framed as to exclude only the plaintiff." And that, "It is difficult to conceive of a more glaring discrimination". What the court plainly had in mind is that it does not appear that any other alien manufacturer whose trade-marks had not been used in Puerto Rico prior to February 1, 1936, appears as yet to have challenged the Act, or to have attempted to force its way into the liquor manufacturing field in Puerto Rico since the Acts in question were enacted. There may, or there may not be, other organizations similarly situated with the plaintiff, who would like to come in. Whether there be or not is immaterial. If there be only this one in the class, that does not give it a monopolistic right to defy the local laws. To the contrary, it may the better illustrate their value and necessity. Competition of just such world famous alien organizations, with the advantages of their famous names and the backing of great accumulated capital, would seem to be among the sort of things that the Legislature may properly consider "unfair" to the local Island industry. The clause in the Act

permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, is not an unusual provision, nor in any way unfairly discriminative against foreign organizations that did not seek to come in before that time. On the contrary, it seems quite reasonable to protect those who had already come in while the local laws permitted it, had invested money and established themselves at that time.

H. As the Circuit Court of Appeals said (R. 442; *ante*, "Suggestions," p. 7):

> "We think the court's ruling that the statutes are invalid as constituting a denial of equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee" [*petitioner*] "was the only manufacturer affected by the particular statutory provision here considered. But they applied to all who might later engage in the business."

Point XIV

No question of actual deprivation of property is here involved.

On the contrary it appears (*ante*, Footnote 8, pp. 13-14, and "Suggestions", *ante*, p. 2) that this Bacardi organization did not come into the Island before they had full notice of the intention of the Legislature, in the spring of 1936, to enact laws along these lines; and did not in any way definitely obligate themselves, or invest any substantial amount of money, until after the enactment of the second act of the series, Act No. 6 of June 30, 1936. The only question possibly presented here is, therefore, not of any supposed actual deprivation of property, but only if a deprivation of a supposed "liberty" on the part of this alien organization to force its way into the field of manufacturing liquors in Puerto Rico, in defiance of the local law. It possesses no such absolute liberty.

CONCLUSION

The statutes here assailed are valid. The judgment of the Circuit Court of Appeals, reversing the decree of the Dis-

trict Court, was right. The petition for certiorari should be denied.

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APPENDIX

Statutes and Constitutional Provisions

CONSTITUTION:

Article I, Section 8, Clause 3:

The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Article IV, Section 3, Clause 2:

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

Fifth Amendment:

No person shall be * * * deprived of life, liberty, or property, without due process of law * * *

Twenty-first Amendment, Sec. 2:

The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

FEDERAL:

The Organic Act for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951:

Section 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Sec. 35. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated the Legislature of Porto Rico * * *.

Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative nature not locally inapplicable * * *

Federal Alcohol Administration Act, of [illegible]:

To further protect the revenue derived from [illegible]

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> The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

FEDERAL:

The Organic Act for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951:

> Section 2.—That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.
>
> Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a Legislature * * * designated "the Legislature of Porto Rico".
>
> Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, * * * .

Federal Alcohol Administration Act, 49 Stat. 977, c. 814.

To further protect the revenue derived from distilled

spirits, wine, and malt beverages, to regulate interstate and foreign commerce and enforce the postal laws with respect thereto, to enforce the twenty-first amendment, and for other purposes.

Be it enacted • • • , That this Act may be cited as the "Federal Alcohol Administration Act."

Sec. 3. In order effectively to regulate interstate and foreign commerce in distilled spirits, wine, and malt beverages, to enforce the twenty-first amendment, and to protect the revenue and enforce the postal laws with respect to distilled spirits, wine, and malt beverages:

(a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or delivery for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

(b) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

This subjection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

This subsection shall take effect March 1, 1936.

This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this Act.

Sec. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

Unfair Competition and Unlawful Practices

Sec. 5. It shall be unlawful for any person engaged in business as a distiller, brewer, rectifier, blender, or

other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate: • • •

(e) *Labeling.*—To sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with such regulations, to be prescribed by the Administrator, with respect to packaging, marking, branding, and labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are hereby prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), the net contents of the package, and the manufacturer or bottler or importer of the product; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements on the label that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; and (5) as will prevent deception of the consumer by use of

a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, and as will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been indorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,* That this clause shall not apply to the use of the name of any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, wine, or malt beverages, nor to use by any person of a trade or brand name used by him or his predecessor in interest prior to the date of the enactment of this Act; including regulations requiring, at time of release from customs custody, certificates issued by foreign governments covering origin, age, and identity of imported products: *Provided further,* That nothing herein nor any decision, ruling, or regulation of any Department of the Government shall deny the right of any person to use any trade name or brand of foreign origin not presently effectively registered in the United States Patent Office which has been used by such person or predecessors in the United States for a period of at least five years last past, if the use of such name or brand is qualified by the name of the locality in the United States in which the product is produced, and, in the case of the use of such name or brand on any label or in any advertisement, if such qualification is as conspicuous as such name or brand.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Administrator authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

In order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection, no bottler, or importer of distilled spirits, wine, or malt beverages, shall, after such date as the Administrator fixes as the earliest practicable date for the application of the provisions of this subsection to any class of such persons (but not later than August 15, 1936, in the case of distilled spirits, and December 15, 1936, in the case of wine and malt beverages, and only after thirty days' public notice),[11] bottle or remove from customs custody for consumption distilled spirits, wine, or malt beverages, respectively, unless the bottler or importer, upon application to the Administrator, has obtained and has in his possession a certificate of label approval covering the distilled spirits, wine, or malt beverages, issued by the Administrator in such manner and form as he shall by regulations prescribe: *Provided*, That any such bottler shall be exempt from the requirements of this subsection if the bottler, upon application to the Administrator, shows to the satisfaction of the Administrator that the distilled spirits, wine, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. Officers of internal revenue and customs are authorized and directed to withhold the release of such products from the bottling plant or customs custody unless such certificates have been obtained, or unless the application of the bottler for exemption has been granted by the Administrator. The district courts of the United States, the Supreme Court of the District of Columbia, and the United States court for any Territory, shall have jurisdiction of suits to enjoin, annul, or suspend in whole or in part any final action by the

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[11] As amended by S. J. Res. 217, 74th Cong., 2d sess. Prior to the amendment and as originally enacted, the matter in parentheses read: "(but not later than March 1, 1936, and only after thirty days' public notice)."

Administrator upon any application under this subsection; or * * *

(f) *Advertising.*—To publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication or by any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with such regulations, to be prescribed by the Administrator, (1) as will prevent deception of the consumer with respect to the products advertised and as will prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters as the Administrator finds to be likely to mislead the consumer; (2) as will provide the consumer with adequate information as to the identity and quality of the products advertised, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume), and the person responsible for the advertisement; (3) as will require an accurate statement, in the case of distilled spirits (other than cordials, liquers, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled; (4) as will prohibit statements that are disparaging of a competitor's products or are false, misleading, obscene, or indecent; (5) as will prevent statements inconsistent with any statement on the labeling of the products advertised. This subsection shall not apply to outdoor advertising in place on

June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising. The prohibitions of this subsection and regulations thereunder shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, brewer, rectifier, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly or through an affiliate. * * *

PUERTO RICO

Act No. 115, "Alcoholic Beverage Law of Puerto Rico", approved May 15, 1936; Laws of 1936, regular session, pp. 610, *et seq.*

Sec. 41.—[Pertinent parts copied in Statement, *ante*, pp. 5-7; Laws of 1936, at pp. 640-646].

Sec. 97. * * * —and it shall be in effect until September 30, 1936, as it contains provisions of an experimental nature.

Act No. 6, "Spirits and Alcoholic Beverages Act", approved June 30, 1936; Law of 1936, special session, pp. 44, *et seq.*

To provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes.

Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic bever-

age is rum, said person shall be obliged to have appear on the label the following phrase in English: "Puerto Rican Rum", in letters the size of which the Treasurer shall by regulation prescribe, as well as the name of the person owning the distillery where said rum was distilled. On the label of every alcoholic beverage shall also appear the word "Distilled", "Rectified", or "Blended", as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose. [at p. 76.]

Section 44.—No holder of a permit granted in accordance with the provisions of this Act shall distill, rectify, manufacture, bottle or can, any distilled spirit, rectified spirit, or alcoholic beverage formerly known under a trade-mark or commercial name, because such trade-mark or commercial name has been used on similar products manufactured in Puerto Rico or outside of the Island; *Provided,* That this limitation shall not apply to any trade-mark or commercial name used for products manufactured in Puerto Rico prior to the approval of this Act; and *Provided, further,* That distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be exported from Puerto Rico only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and the regulations of the Treasurer. [at p. 78.]

Act No. 149, approved May 15, 1937; Laws of 1937, regular session, pp. 392-396.

To amend Section 1 by adding Section 1(*B*) which declares the Principles and policy of Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for the People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide

funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes"; to amend Section 40 of said Act for the purpose of regulating the use of labels and of imposing conditions upon such persons or entities as may apply for permits to distill, rectify, manufacture, bottle, or can rectified spirits or alcoholic beverages in Puerto Rico; to amend Section 44 of said Act, by imposing conditions upon the holders of such permits; to add Section 44(*B*) to said Act so as to provide for the volume of the containers used in exporting distilled spirits from Puerto Rico; to amend Section 97 of said Act, by providing for remedies before the proper courts; to amend Section 106 of said Act so as to make it effective indefinitely, and to provide that this Act shall take effect ninety days after its approval.

Be it enacted by the Legislature of Puerto Rico:

Section 1.—Section 1 is hereby amended by adding Section 1(*b*) to Act No. 6, approved June 30, 1936, entitled "An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes," which section shall be as follows:

"Section 1.—The short title of this Act shall be "Spirits and Alcoholic Beverages Act.

"Section 1(*b*).—*Declaration of Policy.* It has been and is the intention and the policy of this Legislature to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital so as to avoid the increase and growth of financial absenteeism and to favor said domestic industry so that it may receive adequate protection against any unfair competition in the Puerto Rican market, the continental American

market, and in any other possible purchasing market."

Section 2.—Section 40 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum*, in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (⅛) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified,* or *blended,* as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further,* That the trade-mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturers, distiller, rectifier, bottler, or canner appears."

Section 3.—Section 44 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 44.—No holder of a permit granted in accordance with the provisions of this or of any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade-mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade-mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been

used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside of the Island of Puerto Rico; *Provided,* That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

Section 4.—Section 44(*b*) is added to said Act No. 6, approved June 30, 1936, which section reads as follows:

"Section 44(*b*).—Distilled spirits, with the exception of ethylic alcohol, 180° proof or more, industrial alcohol, alcohol denatured according to authorized formulas, and denatured rum for industrial purposes, may be shipped or exported from Puerto Rico to foreign countries, to the continental United States, or to any of its territories or possessions, or imported into Puerto Rico, only in containers holding not more than one gallon, and each container shall bear the corresponding label containing the information prescribed by law and by the regulations of the Treasurer; *Provided,* That where any rectifier presents to the Treasurer a sworn application stating that he wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons at the equivalence of 100° proof, the Treasurer is empowered to authorize the sale of such stock in barrels of 40 gallons or more, either for sale in Puerto Rico or for exportation to the United States or to any foreign country. The rectifier obtaining said authorization shall show that the liquidation will be carried out in good faith, for the purpose of discontinuing his business as such, by furnishing the Treasurer with such details and reports as he may request in order to be satisfied that the liquidation is made in good faith, and in such case, neither the natural nor the artificial person securing such authorization from the Treasurer, nor any officer thereof, may obtain a new permit to rectify before the expiration of five years counting from the date on which the permit requested was granted, and the present permit shall be cancelled."

Section 5.—Section 97 of Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 97.—(*a*) Whenever the Treasurer of Puerto Rico is empowered by this Act to sell articles or products confiscated by him or his agents, the aggrieved natural or artificial person may appeal to the corresponding district court, and said court shall have jurisdiction, after hearing the interested parties, to confirm, revoke, or modify the decision of the Treasurer. Said appeal shall be filed within ten days after the interested person is notified.

"(*b*) Any holder of a permit obtained under the provisions of this Act or of any other Act is hereby authorized to appeal to a court of competent jurisdiction through such ordinary or extraordinary proceedings as may be necessary, to demand protection against violations of this Act on the part of other persons, upon the giving of a bond in an amount of not less than five thousand (5,000) dollars nor more than thirty thousand (30,000) dollars."

Section 6.—Section 106 of said Act No. 6, approved June 30, 1936, is hereby amended to read as follows:

"Section 106.—An emergency is hereby declared to exist which requires that this Act take effect immediately, and, therefore, Act No. 6 entitled 'An Act to provide revenues for The People of Puerto Rico by levying internal-revenue taxes on alcoholic spirits and alcoholic beverages, and for the manufacture and sale thereof; to regulate the production, manufacture, importation, and sale of alcohol, spirits, and alcoholic beverages, and to provide license fees therefor; to impose penalties for violations hereof; to provide funds for the administration and enforcement of the Act; to repeal Act No. 115, approved May 15, 1936, and for other purposes', which bears also the short title Spirits and Alcoholic Beverages Act, approved June 30, 1936, as amended, shall be in full force and effect beginning with the approval of this Act, for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of experimental nature. Such experimental nature is hereby abolished and its indefinite and permanent nature is recognized; and all laws or parts of laws in conflict herewith are hereby repealed."

Section 7.—In regard to trade-marks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trade-marks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits, prior to February 1, 1936, provided such trade-marks have not been used, in whole or in part, by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date.

Section 8.—This Act shall take effect ninety days after its approval.

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